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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,707	02/02/2006	Simon Burge	0002262USU/3053	6209

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OHLANDT, GREELEY, RUGGIERO & PERLE, LLP  
ONE LANDMARK SQUARE, 10TH FLOOR  
STAMFORD, CT 06901

EXAMINER

BLIZZARD, CHRISTOPHER JAMES

ART UNIT	PAPER NUMBER
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3771

MAIL DATE	DELIVERY MODE
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08/21/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/533,707

**Applicant(s)**

BURGE ET AL.

**Examiner**

CHRISTOPHER BLIZZARD

**Art Unit**

3771

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 and 35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17 and 20 is/are allowed.
- 6) ☒ Claim(s) 1-14 and 35 is/are rejected.
- 7) ☒ Claim(s) 15-19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5/3/05
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of Group I in the reply filed on 5/18/09 is acknowledged. Claims 1-20 and 35 are currently pending in this application.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 35 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 35 recites the limitation "its depressed condition" in the first and third lines of the claim. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 9 and 10 are rejected under 35 U.S.C. 102(b) as being Anticipated by Armstrong (3,789,843).
7. Regarding claims 9 and 10, Armstrong discloses a breath actuated inhaler comprising a mouthpiece (32), a mouthpiece cover (75) and an air inlet (41), wherein

the mouthpiece cover is arranged such that it acts on a flap (61) to provide a sealing force to close the air inlet (41) (column 7, lines 28-34) (fig. 2).

8. Claim 12 is rejected under 35 U.S.C. 102(b) as being Anticipated by Smith (5,069,204).

9. Regarding claim 12, Smith discloses an inhaler comprising a mouthpiece (4), a mouthpiece cover (38) and an air inlet (fig. 3 below #12), wherein the mouthpiece cover is movable from a first position in which it covers the mouthpiece (fig. 4) to a second position in which it forms a guard over air inlet to prevent blockage (fig. 6, b).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-8, 14 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warren (3,826,413) in view of Armstrong (3,789,843).

12. Regarding claims 1 and 35, Warren discloses a metered dose inhaler comprising means for receiving a pressurized medicament canister (14) (fig. 1); and a breath-actuated mechanism arranged to keep the canister in a depressed condition and further release the mechanism in response to inhalation through in the inhaler (column 5, lines 15-23), thereby releasing canister from a depressed condition to dispense a metered dose (column 2, lines 1-5), but does not disclose the mechanism being a breath actuated latch. Armstrong teaches a metered dose inhaler with a breath actuate latch

mechanism (column 2, lines 38-52). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the inhaler of Warren with a latch mechanism as taught by Armstrong in order to provide the advantage of a simple way to release the canister from a depressed condition and administer medicine.

13. Regarding claim 2, the combination of Warren and Armstrong teach the claimed invention wherein Armstrong teaches a pivotally mounted latch arm (62) operatively associated with a hinged flap (61) activated to rotate up inhalation (column 5, lines 15-41).

14. Regarding claim 3, the combination of Warren and Armstrong teach the claimed invention wherein Armstrong teaches the hinged flap (61) closes an air inlet (41) (fig. 2)

15. Regarding claims 4-6, the combination of Warren and Armstrong teach the claimed invention wherein Armstrong teaches an external strap (74) restoring the flap (61) and latch mechanism to a rest position (column 7, lines 28-34).

16. Regarding claims 7 and 8, the combination of Warren and Armstrong teach the claimed invention wherein Armstrong teaches the strap (74) being attached to an external mouthpiece cover (75) and the mouthpiece cover (75) covering the mouthpiece to restore the flap to a resting position (fig. 2).

17. Regarding claim 14, the combination of Warren and Armstrong teach the claimed invention wherein Armstrong teaches that when the canister is inserted into the inhaler the interior of the inhaler is substantially closed except for a mouthpiece (31) and air inlet (41) (column 4, lines 14-18).

18. Claims 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warren (3,826,413) and Armstrong (3,789,843) as applied to claim 7 above, and further in view of Smith (5,069,204).

19. Regarding claims 11 and 13, the combination of Warren and Armstrong teach the claimed invention except for a pivotally mounted mouthpiece cover that acts a guard over the air inlet to prevent blockage. Smith teaches an inhaler comprising a mouthpiece cover (38) and an air inlet (fig. 3 below #12), wherein the mouthpiece cover is pivoted to a position in which it forms a guard over air inlet to prevent blockage (fig. 6, b). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the invention taught by Warren and Armstrong with a mouthpiece cover as taught by Smith in order to provide the advantage of a means of protection of the latch mechanism.

#### ***Allowable Subject Matter***

20. Claims 15-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

21. Claims 17 and 20 allowed.

#### ***Conclusion***

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Warren (3,814,297) a breath actuated inhaler with vane flap, Bacon (7,047,964) a breath actuated inhaler with counter, and Clark (6,907,876) an inhaler with helical counter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER BLIZZARD whose telephone number is (571)270-7138. The examiner can normally be reached on Monday thru Friday, 9:00AM -5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571)2724835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CHRISTOPHER BLIZZARD/  
Examiner, Art Unit 3771

/Justine R Yu/  
Supervisory Patent Examiner, Art Unit 3771